

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

ORDER

The record has been reviewed and supports the proposed findings and conclusions. (Doc. 33). In particular, I accept the view of Magistrate Judge Maughmer that full consent to search for identifying documents was given by Ms. Brown, the tenant. The objection that there was a special privacy interest in an identifiable portion of the bed, and that defendant had a superior privacy interest that could not be waived by Ms. Brown is rejected. It is belated, and not contained in the motion to suppress. While this is excusable, because the testimony could not be anticipated, I do not find any citation or sound reason for conclusion that a bed has some divisible occupancy interest. A bright line test in the context of this case would identify luggage and the like as the objects of special privacy interests.

The claim of unlawfully extended delay in keeping defendant from Ms. Brown is not asserted in the motion to suppress and thus was not dealt with by Judge Maughmer. I conclude that the objection is untimely. Further, the evidence does not support the contention made, and there is no evidentiary basis to conclude that if Mr. Mackey had been aware of the consent and the search he would have interposed an objection.

Defendant's motion to suppress evidence (Doc. 20) will be DENIED and the Report and Recommendation (Doc. 33) will be ADOPTED. SO ORDERED.

/s/ Howard F. Sachs
HOWARD F. SACHS
UNITED STATES DISTRICT JUDGE

April 7, 2008

Kansas City, Missouri